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HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE SHRI H.L. DATTU, CJ.

WRIT PETITION No. 3746 of 1995

PETITIONER Ramji Lal Verma, aged about 30 years, Resident of Village Banerakhon Post Office Semra, Distt. Bhind (Madhya Pradesh) Pin Code. No.477227.

VERSUS

RESPONDENTS

1. The Directorate General, Central Industrial Security Force Block No.13 C.G.O. Complex Lodhi Road, New Delhi.
2. The Deputy Inspector General, Central Industrial Security Force, Bhilai Steel Plant, Bhilai Nagar, Distt. Durg (M.P.).
3. The Commandant, Central Industrial Security Force, Bhilai Steel Plant, Distt.Bhilai (M.P).
4. The Enquiry Officer/ Dy. Commandant Bhilai Steel Plant, Bhilai, Distt. Durg (Madhya Pradesh).

Writ Petition under Articles 226 & 227 of the Constitution of India.

Present: Shri F.S. Khare, counsel for the petitioner.

Shri S.K. Beriwal, Standing counsel for the respondents.

ORAL ORDER

(Passed on 4th May, 2007)

The petitioner was working as Barber in Central Industrial Security Force. He was posted at Bhilai Steel Plant, Bhilai. By an order passed on 17.06.1994 he was kept under suspension in contemplation of the departmental enquiry proceedings. The Disciplinary Authority of the force has issued a charge-memo dated 23.06.1994. Along with the charge-memo the delinquent employee was served with, statement of imputations, list of witnesses and list of documents, the Disciplinary Authority would be relying on in support of the charge-memo.

(2) The Disciplinary Authority by order dated 15.07.1994 had appointed the Enquiry Officer to enquire into the allegations contained in the charge-memo. Before the Enquiry Officer, the Disciplinary Authority had examined five witnesses in support of the allegations made in the charge-memo. The Enquiry Officer had permitted the delinquent employee to cross-examine all the five witnesses who were produced before the Enquiry Officer by the Disciplinary Authority. The Enquiry Officer thereafter after obtaining certain clarifications from the delinquent employee had submitted his enquiry report and other relevant records to the Disciplinary Authority. The Enquiry Officer in his report has observed :

> "None of the prosecution witnesses No. 1,2,3,4, 5 namely Constable Shyam Paul, Head Constable A.M.V. Pilley, Constable Banwari Lal, Constable N.K. Sharma and Constable B.N. Jaiswal has seen Barber Ramji Lal Verma committing theft nor caught him red handed. Commission of theft of Rs. 3000/- belonging to Constable B.N. Jaiswal, by accused/ Barber Ramji Lal Verma appears to be only suspicion."

Thereafter, the Enquiry Officer has observed that the charge against the delinquent employee is partly proved. The Disciplinary Authority thereafter with the available evidence on record has come to the conclusion that the Enquiry Officer was not justified in coming to the conclusion to the effect that the charge against the delinquent employee is partly proved. The opinion of the Disciplinary Authority is that the charge leveled against the delinquent employee is fully proved. Having come to that conclusion and keeping in view the gravity of the charge leveled against the delinquent employee has proceeded to pass an order dated 27.09.1994 terminating the services of the delinquent employee. The order passed by the Disciplinary Authority is as under :

> "Though the stolen money of Rs.3,000/- of B.N. Jaiswal was not recovered from Barber Ramjilal Verma, but two hundred rupee notes wherein '899' and 'Banwari gave two

> thousand 08.06.1994, 2000' written by Constable B.N. Jaiswal in his handwriting before the theft, were recovered. From the above all facts it is evident that the accused only had stolen the money of Constable B.N. Jaiswal. Therefore, I hold the charge leveled against the accused Barber Ramji Lal Verma to be fully proved against him." (***underlined by me***)."

(3) Aggrieved by the aforesaid order passed by the Disciplinary Authority, the delinquent employee had filed an appeal before the First Appellate Authority who by his order dated 09.05.1995 has rejected the appeal and thereby confirmed the orders passed by the Disciplinary Authority.

(4) The delinquent employee being aggrieved by the aforesaid order passed by the Disciplinary Authority dated 27.09.1994 and also the order passed by the Appellate Authority dated 09.05.1995 is before this Court in this petition under Articles 226/227 of the Constitution of India.

(5) Learned counsel appearing for the petitioner would contend that the Disciplinary Authority before disagreeing with the findings of the Enquiry Officer ought to have issued an appropriate notice to the petitioner and it is only thereafter, should have disagreed with the findings of the Enquiry Officer. Since that has not been done, the same is contrary to Rule 34 (11) of the Central Industrial Security Force Rules, 1969 (for short "the Rules") and also contrary to the observations made by the Apex Court in the case of **Ranjit Singh Vs. Union of India and others**, reported in **(2006) 4 SCC 153**.

(6) Shri S.K. Beriwal, learned counsel appearing for the respondents sought to justify the impugned orders. According to the learned counsel, the Disciplinary Authority with the available evidence on record has come to the conclusion that the charge leveled against the delinquent employee is fully proved and therefore, was justified in passing the impugned order terminating the services of the delinquent employee.

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(7) The first issue that requires to be considered is that when the Disciplinary Authority disagrees with the findings of the Enquiry Officer what is procedure that requires to be followed by him.

(8) Rule 34 of the Rules provides for procedure for imposing major penalties. Sub-rule (11) of Rule 34 of the Rules provides as under :

> " **34. Procedure for imposing major penalties. –**
> **(1) xxxx**
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> (11) Orders passed by the disciplinary authority shall be communicated to the member of the Force who shall also be supplied with a copy of the report of the Inquiring Authority referred to above and, where the Disciplinary Authority is not the said Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, along with the findings of the said Inquiring Authority shall also be supplied to that member."

(9) The order passed by the Disciplinary Authority shall be communicated to the member of the force who shall also be supplied with a copy of the report of the Inquiring Authority referred to above and, where the Disciplinary Authority is not the said Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, along with the findings of the said Inquiring Authority shall also be supplied to that member.

(10) The Supreme Court in the case of **Ranjit Singh Vs. Union of India and others*(Supra)*** has observed as under :

> "The principles of natural justice are required to be complied with by the disciplinary authority in the event he intends to differ with the findings of the enquiry officer and in such an event the prejudice doctrine would not be applicable. "

(11) The Supreme Court in the case **Punjab National Bank and others Vs. Kunj Behari Misra,** reported in **(1998)7 SCC 84** has observed as under :

> "The Principles of natural justice would demand that the authority which proposes to decide against the

> delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard, for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority. "

(12) Keeping in view Sub-rule (11) of Rule 34 of the Rules and also the law laid down by the Apex Court, let me once again notice the fact situation. The Disciplinary Authority had issued a charge-memo. In the said charge-memo specific allegation that was made against the delinquent employee was that he has committed an act of theft of Rs.3,000/- of one B.N. Jaiswal. The Disciplinary Authority had appointed an Enquiry Officer to enquire into the allegations made in the charge-memo. The Enquiry Officer after recording the evidence of the prosecution witnesses has positively come to the conclusion that the charge alleged against the delinquent employee is not proved. Though in his report he has observed that the charge is partly proved, a reading of the enquiry report of the Enquiry Officer would give a clear indication that the Enquiry Officer was of the opinion that the prosecution had failed to prove the allegation made in the charge-memo.

(13) After receipt of the report of the Enquiry Officer, the Disciplinary Authority with the available evidence on record has come to the conclusion that the charge alleged against the delinquent employee is proved. Before doing so, in my opinion, the Disciplinary Authority has to form a tentative opinion and that tentative opinion along with the copy of the report of the Enquiry Officer requires to be supplied to the delinquent employee. It is only

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after receiving the reply from the delinquent employee, the Disciplinary Authority is required to pass an order, may be, disagreeing with the findings of the Enquiry Officer. This procedure requires to be followed for the simple reason that the Enquiry Officer has given a clean-chit to the delinquent employee and if that clean-chit requires to be reversed by the Disciplinary Authority, he has to give an opportunity of hearing to the delinquent employee to support the report of the Enquiry Officer. In the instant case, as I have already noticed that the Enquiry Officer had given a clean-chit to the delinquent employee, but the Disciplinary Authority is not willing to accept the findings of the Enquiry Officer. It is not necessary for the Disciplinary Authority in all the cases to accept the findings of the Enquiry Officer, he can also disagree with the findings of the Enquiry Officer, but before doing so it is expected of him to issue a notice of the tentative opinion of disagreeing with the findings of the Enquiry Officer along with the report of the Enquiry Officer to the delinquent employee. In the instant case, the Disciplinary Authority without following the procedure prescribed under Sub-rule (11) of Rule 34 of the Rules and without noticing the *dicta* of the Apex Court has proceeded to hold the delinquent employee guilty of the charge alleged in the charge-memo. The procedure so adopted is contrary to Sub-rule (11) of Rule 34 of the Rules. Therefore, imposition of penalty by the Disciplinary Authority cannot be sustained by me for the reason that the same is in violation of Sub-rule (11) of Rule 34 of the Rules and also the dicta of the Apex Court. Therefore, the order passed by the Disciplinary Authority requires to be set aside. These aspects of the matter ought to have been noticed by the Disciplinary Authority as well as by the Appellate Authority before confirming the order passed by the Disciplinary Authority. Since that has not been done, the order passed by the Disciplinary Authority as well as the order passed by the Appellate Authority cannot be sustained by me. Accordingly, the following:

ORDER

(i) The petition is allowed.

(ii) Rule made absolute.

(iii) The impugned order passed by the Disciplinary Authority dated 27.09.1994 and the order passed by the Appellate Authority dated 09.05.1995, are set aside.

(iv) Liberty is reserved to the Disciplinary Authority to proceed from the stage the defects are noticed by this Court.

(14) With these observations and directions, the writ petition is disposed of.

Ordered accordingly.

Sd/-
Chief Justice